From: Dave Kennedy
To: Microsoft ATR
Date: 1/28/02 1:16am
Subject: Microsoft Settlement

To: Renata B. Hesse
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Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

While there are good aspects of the Proposed Final Judgement (PFJ), I will concentrate instead on the issues that need correcting.

In addition to these comments, I agree with Dan Kegel's open letter and essay 'On the Proposed Final Judgment in United States v. Microsoft'. He has invested a great deal of effort into systematically identifying the flaws in the PFJ and in designing suggested corrections.

I was surprised to find that:

- The proposal does not even address the issue of Microsoft intentionally designing into their operating system roadblocks to Non-Microsoft operating system developers for the purpose of maintaining their monopoly.

- The proposal provides definitions of Microsoft's current and future products that are too narrow. Briefly, the definition of "API" is succeptible to version number modifications and the definition of "Middleware" is succeptible to distribution method modifications. For example, the PFJ would not cover Microsoft's software that is distributed via Windows Update. This is a serious loophole.

- The proposal neglects to address the release of file formats for "popular" office productivity software. This is a critical aspect of Microsoft's monopoly power as it provides leverage for excluding Non-Microsoft operating systems just as do its tactics regarding Internet Explorer. Office productivity applications have become a very important feature of operating systems, and non-disclosure of office application file formats prevents other operating systems from providing compatibility with Microsoft office applications, and, of course, Microsoft's office applications are not capable of running on any but a select few operating systems. This constructs a prohibitive sacrafice that is necessary for switching to Non-Microsoft operating systems because the end user's office application documents cannot be converted to formats that are usable by the Non-Microsoft operating system. All intellectual and

time-related investments in such documents would be lost if an end user chose to switch to another operating system. As a result, Non-Microsoft operating systems become less commercially viable.

Undocumented file formats have already been found to strengthen Microsoft's Applications Barrier to Entry in the "Findings of Fact" paragraphs 20 and 39. This issue should not be ignored by the Final Judgement.

- Only forcing Microsoft to disclose its pricing schedule to the top 20 customers is wholly inadequate, for it neglects protection of all other customers, especially those who are not as powerful as the top 20.

- Many people are confused and frustrated that the Free Software Movement issues relating to Microsoft's abuses are not addressed by this PFJ.
For example, forcing Microsoft to

"disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product." (The Proposed Final Judgement)

does nothing to prevent witholding or implementation of technical information from developers of efforts toward operating systems that provide Microsoft operating system functionality for non-Microsoft operating systems. An example of such a project is WINE.

In addition, it is rather alarming to find that many aspects of the proposal do not explicitly allow private developers who are creating products for Non-Microsoft operating systems to implement the technical information mentioned. How is the restriction to businesses and organizations justified? Why are the secret patents held by Microsoft not addressed by this Proposed Final Judgement?

There are many other issues with the Proposed Final Judgement that I have not discussed here. Please refer to Dan Kegel's essay, 'On the Proposed Final Judgment in United States v. Microsoft', for a more thorough description of the problems and their solutions.

While some of these points may not be an immediate concern to some, they must be covered in the judgement because:

"... as is indicated by the record in this case,
Microsoft can and does take advantage of any loopholes in
contracts to create barriers to competition and enhance and
extend its monopoly power." (Ralph Nader and James Love, 2001)

Is this what the USDOJ intends to allow?

Please, let's have a geniune effort at disciplining Microsoft.

Thank-you.
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References:
Dan Kegel's Open Letter to DOJ Re: The Microsoft Settlement
URL:
http://www.kegel.com/remedy/letter.html

Ralph Nader and James Love, November 5, 2001, "RE: US v. Microsoft proposed final order"
URL:
http://www.cptech.org/at/ms/rnjl2kollarkotellynov501.html